



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

DEON D. JENKINS,
Petitioner,

vs.

JON OZMINT, SCDC Director, HENRY D.
MCMASTER, Attorney General for
South Carolina,
Respondents.

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CIVIL ACTION NO. 0:05-1762-HFF-BM

ORDER ADOPTING THE REPORT AND RECOMMENDATION OF THE
MAGISTRATE JUDGE, GRANTING RESPONDENTS' MOTION FOR SUMMARY
JUDGMENT, AND DISMISSING THE PETITION *WITHOUT PREJUDICE*

Petitioner, who is proceeding *pro se*, filed this action pursuant to Section 2254. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that Petitioner's Petition be dismissed, *without prejudice*, for failure to exhaust his state court remedies. The Magistrate Judge directed Respondents to serve a copy of the Report on Petitioner's current PCR counsel so that counsel would be advised of Petitioner's desire to proceed expeditiously in state court. The Report was made in accordance with 28 U.S.C. § 636 and Local Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Matthews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on January 6, 2006. Petitioner has failed to file any objections to the Report. In the absence of objections, the Court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983).

After a thorough review of the Report and the record in this case pursuant to the standards set forth above, the Court adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that Respondents' Motion for Summary Judgment must be **GRANTED** and Petitioner's Petition must be **DISMISSED**, *without prejudice*, for failure to exhaust his state court remedies. Respondents are hereby directed to serve a copy of this Order on Petitioner's current PCR counsel forthwith.

IT IS SO ORDERED.

Signed this 30th day of January, 2006, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified of the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.